IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4076 of 2004

Date of Decision: 28-04-2005

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MULABHAI N. CHAVDA

Versus

UNION OF INDIA

(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

Appearance:
MR GR MALHOTRA for Petitioner No. 1
RULE SERVED for Respondent No. 1,3
SERVED BY RPAD - (R) for Respondent No. 1
MS MEGHA JANI for Respondent No. 2

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Through this Special Civil Application, order of Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (CAT), passed in Original Application No.608 of 1998 dated January 20, 2004, has been challenged.

#. Briefly stated, petitioner was working as Assistant Luggage Clerk, Sabarmati. He was charged with loading of extra Metre Guage wagons in connivance with Shri

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Whether reporters of Local Papers may be allowed to see the Judgment?

V.H.Makwana, HGC, falsely showing these wagons to be holding contents of Broad Guage Wagons of CR 90178 Ex KRH to BVC. By this act, the petitioner made delivery of excess coal to the consignee and that he loaded one other extra Metre Guage wagon of extra coal to the consignee with similar modus operandi exhibiting doubtful integrity and devotion to duty. Finally, order of removal from service was passed by the disciplinary authority vide order dated 27.7.1993. Appeal against the order was filed, rejected by the appellate authority in March 1994. The petitioner filed O.A.No.518 of 1994. CAT found that petitioner had not exhausted departmental remedy by filing revision application, therefore, he was asked to file the same within three weeks, the respondents to dispose of the same within six weeks thereafter. Accordingly, Original Application was disposed of by order dated 10.10.1994. Thereafter, petitioner filed revision petition before the Additional Divisional Railway Manager on 20.10.1994. It was disposed of vide order dated 28.12.1994. The revisional authority confirmed the order of appellate authority. Therefore, petitioner filed Original Application No.608 of 1998 before CAT.

Respondents took objection that original application was not filed within prescribed period under section 21 of the Administrative Tribunals Act, 1985 and M.A.No.736 of 2003 for condonation of delay in filing the O.A.No.608 of 1998 was filed in December 2003 after objection was taken in reply by respondents. The grounds for condonation of delay were vague, therefore, could not be accepted, more so, when direction to petitioner was to file revision before Additional Divisional Railway Manager, Vadodara. Therefore, filing of revision application before the General Manager, Western Railway, and waiting for reply was not justified.

These submissions were considered by CAT which found that O.A. was barred by time counted from 28.12.1994. The petitioner was directed to file revision application before the Additional Divisional Railway Manager and not before General Manager. Therefore, Additional Divisional Railway Manager decided the same on 28.12.1994; preferring revision before General Manager was not justified in the absence of direction by the Tribunal. Tribunal orders were clear and there was no confusion when the petitioner sent revision application

to Additional Divisional Railway Manager, Vadodara, on October 20, 1994. Further, CAT had extended liberty to petitioner to approach it in the event he felt aggrieved by the decision of Additional Divisional Railway Manager. With this background, filing of revision to General Manager and waiting for decision was not justified. Claim that it was done at legal advise has been rejected on the basis that name of counsel giving wrong advise was not disclosed nor the date when advise was given. Substance of the matter is, CAT felt dissatisfied with the submissions advanced by petitioner for condonation of delay. Consequently, Original Application is held time barred, therefore, dismissed.

#. Learned counsel for the parties heard, impugned order of CAT perused. True it may be that petitioner approached the General Manager also in addition to the Additional Divisional Railway Manager, to later as per direction of CAT and former, of his own. While approaching the General Manager, bonafide belief may be to seek relief against removal from service from higher authority and not to delay the matter. Assuming, CAT directed him to approach the Additional Divisional Railway Manager, but it did not prohibit him from approaching the General Manager. Approaching General Manager does not amount to lack of bonafides on the part of petitioner. After having received adverse order from Additional Divisional Railway Manager dated 28.12.1994, he may be under the impression that higher authority may decide the revision petition in his favour. The General Manager should have disposed of the revision application within reasonable time instead of keeping the same pending. This delay has impaired further action on order of Additional Divisional Railway Manager dated 28.12.1994. That is how, petitioner approached the CAT late. Application could be filed before CAT for condonation of delay, may be after objection by respondents. Petitioner was being advised by lawyer in his matter. Revision petition to General Manager, Western Railways, was also preferred on the advise of lawyer. He expected the General Manager to decide the application which was not done. Detailed facts are stated in the application supported by affidavit.

#. Ordinarily, a litigant does not stand to benefit for lodging the matter late. Where stakes are high, refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. When

substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. It must be grasped that system is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. (See: State of Bihar v. Kameshwar Pratapsingh - JT 2000(5) SC 389, Union of India & Others v. A.Vasu - (1998)8 SCC 562, State of Haryana v. Chandramani & others - (1996)3 SCC 132).

While considering the matter of delays, Court ought to keep in mind the judgment impugned, extent of the property involved and the stakes of parties, discretion to be exercised to advance substantial justice (See: M.K.Prasad v. P.Arumugam - (2001)6 SCC 176).

In Ram Nath Sao alias Ram Nath Sahu and others v. Gobardhan Sao and others - 2002 AIR SCW 978, the Apex Court has held that "sufficient cause" under section 5, Limitation Act or Order 22, Rule 9, Civil Procedure Code (5 of 1908) should receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to party.

#. Adverting to facts of this case, petitioner moved O.A.No.518 of 1994 seeking relief against removal from service. He is directed to prefer revision application before Additional Divisional Railway Manager. First round of litigation is over by CAT order dated 10.10.1994. The revisional authority decides against him, thereby maintaining order of appellate authority. Second round of litigation starts by filing O.A.No.608 of 1998. Consistently, he is challenging the action against him. There is no delay in filing the O.A.No.518 of 1994. Delay happens because he waits for the General Manager to decide his revision petition. Approaching both the authorities, namely, Additional Divisional Railway Manager and General Manager, Western Railways, demonstrates action and not inaction, his bonafides and not lack of bonafides, and anxiety to seek justice from authorities. The General Manager should have decided the revision petition preferred by him one way or the other within reasonable time. Had he done so, petitioner would not have faced the onslaught of opposition by respondents

clamoring for dismissal of original application simply on the ground of delay without touching the merits of order of removal from service. Petitioner had been advised by lawyer, fact supported by affidavit, therefore, there is no reason why his statement should not be accepted. He is not going to gain for late filing of original application, rather, he was taking high risk since he had been removed form service by way of punishment. His subsistence is snatched, stigma of removal from service is attached, therefore, his attempts to pursue the matter cannot be regarded unjustified and lacking in bonafides. Sufficient cause for late filing of original application has been clearly established. The CAT ought to have considered all the facts and circumstances of the case, taken pragmatic instead of pedantic view of the matter, allowed the application, and heard the case on merits.

#. In the aforesaid circumstances, petition is allowed, order of CAT dated 20.1.2004 is set aside. Delay in filing the original application is condoned. Original Application No.608 of 1998 is remanded to the CAT for hearing and deciding it on merits. Rule made absolute. No costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)